

Richard E. Grady
PO Box 547
9312 Lincoln Road West
Canyon Creek, Montana 59633

Thursday - February 19, 2009
Senate Agriculture, Livestock and Irrigation Committee
3:00 p.m. Room 335

Mr. Chairman, Senator Donald J. Steinbeisser, and members of the committee;

I am submitting written testimony in support of Senate Bill No. 473 introduced by Senator Aubyn Curtiss regarding the **"Implement conservation easement audit recommendations"** at today's committee hearing. On April 1st, 1998 the Grady Families entered into a perpetual conservation easement with the Montana Department of Fish, Wildlife and Parks (FWP). For the past 11 years my family has worked with representatives of FWP on an annual monitoring program regarding the terms and conditions of the conservation easement, along with participation under the Block Management Program.

I recently was appointed to the Region 3 Citizens Advisory Committee within FWP and by the Lewis and Clark County Commissioners to serve on a Lewis and Clark County Citizens Advisory Committee for preserving open space lands. I support conservation easements that are an important voluntary tool for estate planning that family ranching operations have to protect the resource and economic value of the land, water and wildlife.

The language within Senate Bill No. 473 has been well written by the legislative staff and Senator Curtiss addressing conservation easements within Montana and audit recommendations in the future.

I support the work that was completed by the Montana Legislative Audit Division; Performance Audit dated January 2007 on Conservation Easements. Much of the work completed in the performance audit report reflects the language found within Senate Bill 473.

It is important that the legislature continue to work on legislative issues regarding conservation easements for private landowners who voluntary wish to place their lands under a conservation easement. It is important to work with the Montana Fish, Wildlife and Parks, Montana Department of Natural Resources and Conservation - School Trust Lands, Department of Administration, Department of Revenue, Montana Natural Heritage Program, Lewis and Clark County Open Space Bond, and Land Trusts in Montana based on the language outlined in the bill.

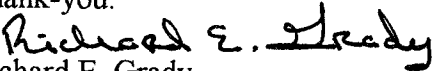
I testified in support of Senate Bill 129 introduced by Senator Dave Lewis on wildfire mitigation upon the recommendation of the Montana Fire Suppression Interim

Committee to the Senate Taxation Committee hearing on February 4, 2009. I would recommend the committee evaluate the language in this bill and the amendments that have been recommended under Senate Bill 129 to see if any language perhaps should be incorporated in either bills or if there is conflicting language. My reason for this request to the committee, is that a private landowner needs to look at forest management practices as we are faced with the epidemic of the Mountain Pine Beetle, a declining forest industry and uncertain economic times we are facing in the State and the nation.

I support **Section 2, Duration of conservation easements** – termination with the language granted in perpetuity or for a term of years. I oppose changing this wording under Section 76-6-202, MCA being proposed under Senate Bill 478 by Senator John Brenden, based on my family's experience regarding State and Federal regulations affecting capital gain taxes. My family worked very close with tax accountants, tax advisors and attorney's pertaining to the wording of perpetual easements and term of years. This was discussed in detail under the performance audit of conservation easements and several publications that are available to a private landowner.

I have attached additional information for the committee that provides supporting documentation regarding my support of Senate Bill No. 473 on behalf of Senator Curtis.

Thank-you.


Richard E. Grady

GRADY RANCHES

DEED OF
CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT is made this 15th day of April, 1998, by GRADY RANCH CO., a Montana corporation, GRADY LIVESTOCK CO., a Montana corporation, EDWARD J. GRADY, and EILEEN L. GRADY, (Landowner) whose address is Canyon Creek, Montana 59633, to the MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS, whose address is 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701 (Department).

I. RECITALS

A. The state of Montana recognizes that certain native plant communities providing important wildlife habitat are worthy of perpetual conservation and have directed the Department to acquire conservation easements by voluntary, cooperative means to conserve such wildlife habitat.

B. The Landowner is the owner of certain real property in Lewis and Clark County, Montana, (the "Land") described in Exhibit A attached hereto and incorporated herein by this reference.

C. The Land possesses significant communities of native plants, wildlife habitat, natural and scenic open space and recreation values (collectively "conservation values") worthy of perpetual conservation and valuable to the people of Montana.

D. The conservation values of the Land can be protected by granting a conservation easement to the Department with the Landowner retaining fee title to the Land.

E. Landowner and Department intend that the conservation values of the Land be preserved and maintained by the continuation of land use patterns existing at the time of this grant which do not significantly impair or interfere with these conservation values.

F. Public hunting is an effective tool of wildlife management and the opportunity for public hunting is a desirable recreational use of the Land.

G. This Easement does not preclude the Landowner from granting access to neighboring land consistent with the purpose of this Easement to protect the conservation values



Montana Fish, Wildlife & Parks

Region 3, 1400 S. 19th Avenue, Bozeman, MT 59718
Phone: 406-994-4042; Fax: 406-994-4090; Web: fwp.state.mt.us

January 16, 2009

Mr. Richard Grady
PO Box 547
Canyon Creek, MT 59633


Dear ~~Mr.~~ Grady,

I am pleased to inform you that you have been selected for the Montana Fish, Wildlife & Parks Region 3 Citizens' Advisory Committee (CAC). You're now one of 16 citizen advisors to FWP for southwest Montana.

Six new members were selected by a group of regional program managers. As we evaluated the pool of 37 applicants, our primary goal was to maintain a diverse group of community leaders who represent a balance of interests, backgrounds, and geographical areas. I believe you and the other citizens who were selected will ably assist us in managing the region's incredible natural resources and recreational opportunities. I think you will enjoy getting to know your fellow advisors and learning their perspectives on various issues.

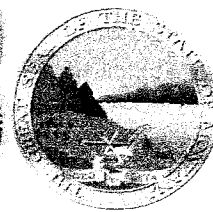
The CAC meets four times each year at various locations across the region. The next CAC meeting is scheduled for February 18 from 1-7 p.m. in Bozeman at the FWP regional office (1400 S. 19th Ave.). A draft agenda and other pertinent information will be sent to you soon. We would like to invite you to join us prior to the meeting at 11 a.m. for a short orientation and lunch with some current CAC members and FWP staff.

I've enclosed a copy of the Region 3 CAC Charter. Please review it and call me with any questions you have about your role, as well as the scope and responsibilities of the CAC.

My phone number is 994-4050 and my email address is pflowers@mt.gov. You can also direct questions to our Information and Education Manager Melissa Frost at 994-6931 or mfrost@mt.gov.



Lewis & Clark
C O U N T Y



BOARD OF COUNTY COMMISSIONERS

Andy Hunthausen

Michael A. Murray

Ed Tinsley

City County Building 316 North Park Helena, Montana 59623 406.447.8304 Fax: 406.447.8370

December 31, 2008

Richard E. Grady
PO Box 547
Canyon Creek, MT 59633

Dear Rick:

I am pleased to inform you that on December 30, 2008, the Board of County Commissioners took action to appoint you to the Lewis and Clark County Citizens Advisory Committee for preserving open space lands. Staggered terms of office will be determined at the first organizational committee meeting.

Our office will notify you in January of the first meeting. If you have any questions in the meantime, feel free to contact me at cbyrnes@co.lewis-clark.mt.us, or phone 447-8305.

Thank you for your interest in serving on the Citizens Advisory Committee. We look forward to working with you and your fellow committee members in the future.

Sincerely,

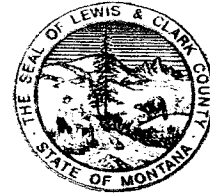
Ed Tinsley

Ed Tinsley, Chairman

TO: Sharon Hencley, Independent Record

DATE: December 5, 2008

CONTACT: Carole Byrnes, Executive Secretary
Lewis and Clark County
Board of County Commissioners
447-8305 / Fax 447-8370
I.R. Account # 60000278



PUBLISH: Block Ad, December 8 & 14, 2008

**LEWIS AND CLARK COUNTY CITIZEN ADVISORY COMMITTEE
(For Preserving Open Space Lands)**

On November 4th the voters of Lewis and Clark County approved the issuance of general obligation bonds in the amount of up to ten million dollars (\$10,000,000.00) for the purpose of preserving open-space lands in the county, including working lands and land for protecting water and wildlife, by providing funds to acquire conservation easements or other property interests from willing sellers.

The Board of County Commissioners (BOCC) is seeking applications for appointment to a Citizens Advisory Committee charged with reviewing and evaluating land conservation proposals, making recommendations on the expenditure of bond funds, and evaluating other opportunities for the voluntary conservation and preservation of open lands and natural areas in Lewis and Clark County. The committee will consist of 11 members, including representation from citizens residing in each of the six planning districts, and the cities of Helena and East Helena, and have one or more of the following qualifications or areas of expertise:

- | | |
|---|----------------------------|
| -Resident of Lewis & Clark County | -Communications |
| -Own and/or work Ranch/Farm/Timberland | -Rural Real Estate |
| -Heritage Lands Working Group Participant | -Development Industry |
| -Wildlife/Natural Resource Conservation | -Resource Extraction |
| -Financial/Banking | -Private Land Conservation |

Applications may be obtained from the office of the County Commission, Room 304, City-County Building, 316 N. Park Avenue, Helena, or online at www.co.lewis-clark.mt.us (boards and vacancies section). Terms will be established upon creation of the advisory committee. Applications will be accepted until 5 p.m. on Monday, December 22, 2008.

Further information may be obtained by calling the County Commission office at 447-8305.

Heritage Lands Working Group Members

Mike Bay
Sarah Howe-Cobb
John Cronholm
Becky Garland
Rick Grady
Mike Griffith
Roseva Guest
David Olson
Jim Paris
Sally Shortridge
Tom Thompson
John Tietz

Heritage Lands Technical Advisors

Andy Baur, Prickly Pear Land Trust
Robert Rasmussen, The Trust for Public Land
Rebecca Shaw, Lewis and Clark County
Ed Tinsley, Lewis and Clark County

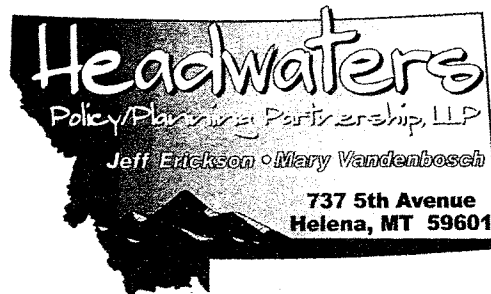
Heritage Lands Partners

City of Helena
Lewis and Clark Conservation District
Lewis and Clark County
Prickly Pear Land Trust

Heritage Lands Facilitators

This report was prepared by the facilitators for the Heritage Lands Working Group:

Jeff Erickson and Mary Vandembosch
Headwaters Policy/Planning Partnership, LLP
(406) 449-3229 or Headwaters@q.com





Legislative Audit Division

State of Montana

Report to the Legislature

January 2007

Performance Audit

Conservation Easements

The Department of Administration
The Department of Revenue
The Montana Natural Heritage Program

This report contains findings and recommendations developed as a result of our performance audit of conservation easements in Montana. This audit was conducted in response to passage of Senate Joint Resolution 20 during the 2005 Legislative Session. Findings and recommendations are summarized as follows:

- ▶ Conservation easements cover 1.5 million acres and have become a significant land use issue.
- ▶ Trends show Montana is a national leader in creation of conservation easements.
- ▶ Improvements in compilation and reporting of easement data are necessary.
- ▶ Conservation easements have not adversely affected property taxes, but the long-term fiscal impact is unclear.
- ▶ Over \$100 million in public funding has been dedicated towards conservation easements in Montana.
- ▶ Public oversight of conservation easements should be improved to ensure the public trust is upheld.

A statewide map of Montana Conservation easements is included as Appendix A of this report.

Direct comments/inquiries to:
Legislative Audit Division
Room 160, State Capitol
PO Box 201705
Helena MT 59620-1705

06P-01

<http://leg.mt.gov/css/audit>

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Conservation Easements

Conservation easements have grown to over 1.5 million acres in Montana; improvements in data collection methods and public oversight of easements are necessary.

Audit Findings

Analysis of conservation easement data shows there are now 1.5 million acres under easement. At the national level, Montana is a leading state in the creation of conservation easements. Easements provide protection for important habitats, but also bind future generations to current land uses. Given growth in easement acreage, they should be considered a significant land use issue for policy makers (Chapter II). Despite the growing significance of easements, Montana's approach to compiling and reporting easement data still relies on voluntary cooperation. There is no method for accurately and consistently collecting easement data (Chapter III). Getting accurate data on easements is important because of effects relating to local property taxes, public funding and public oversight of easement transactions.

Summary Data for Conservation Easements

<u>Conservation Easement Attribute</u>	<u>Value</u>
Total Acreage	1,573,411
Percentage of State Land Area	1.68 %
Number of Easements	1,250
Average Acreage Per Easement	1,271
Largest Contiguous Easement Acreage	107,123

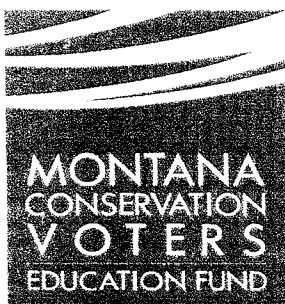
Source: Compiled by the Legislative Audit Division from agency records.

individual and corporate tax deductions are available for easements as charitable contributions. Estimates show indirect funding impacts the state's General Fund by between \$1.7 and \$3 million annually. Taken together, direct and indirect public investment in easements has totaled in excess of \$100 million cumulatively over the years (Chapter V).

Public investment and the expectation of public benefits associated with easements establish a duty of public trust for both grantors and grantees. During our review of easement agreements, we identified several examples where it was unclear whether conservation values and the public trust were being protected. These situations highlight the need for public oversight of conservation easement transactions in Montana. The current approach to easement oversight has relied on voluntary efforts and self-policing by easement grantees (Chapter VI).

Audit Recommendations

Improvements in data collection methods for conservation easements could be made by the Department of Revenue and the Department of Administration. Our recommendations address collection of easement data in counties and integration of this data in the state's Cadastral system (see p.30). To address public oversight of conservation easements, we recommend legislation be enacted to provide for improved oversight mechanisms and ensure the public trust is upheld in easement transactions (see p.65).



Conservation Easements

Many Montana landowners have responded to the rapid development of Montana's open spaces by using conservation easements to protect the agricultural, wildlife and natural values of their lands. Such easements are allowed under Montana's *Open-Space Land and Voluntary Conservation Easement Act*, which is one of the state's most important land use tools for the preservation of open space, wildlife habitat, our agricultural heritage, and rural landscapes.

Since the Act passed in 1975, it has allowed Montana's landowners – and certain public agencies – to permanently protect more than 1.1 million acres.

Over 780,000 acres protected are by Montana's private land trusts, 257,000 acres with Montana Department of Fish, Wildlife and Parks (DFWP), and 142,000 acres with the U.S. Fish and Wildlife Service.

Background

A conservation easement is a permanent deed restriction that controls certain future development on land with high agricultural, wildlife, scenic, recreational, or public values. Under Montana law, conservation easements may only be held by nonprofit land trusts or by public bodies (76-6-104 MCA).

Conservation easements can be placed on state school trust lands only under one of the following situations:

- The Montana DFWP can purchase conservation easements for parcels that are surrounded by or adjacent to land owned by DFWP as of January 1, 2001. This provision is primarily designed to allow easements on lands

within DFWP Wildlife Management Areas such as the Sun River Game Range or the Blackfoot-Clearwater Wildlife Management Area.

- A nonprofit corporation can purchase conservation easements for parcels that are surrounded by or adjacent to land owned by the same corporation as of January 1, 2001. This provision specifically allows The Nature Conservancy to purchase easements on school trust lands at Pine Butte Swamp on the Rocky Mountain Front near Choteau and the Matador Ranch in north central Montana.
- A nonprofit corporation can purchase a conservation easement for the Owen Sowerwine Natural Area near Kalispell. This provision specifically applies to a parcel of school trust land for which Montana Audubon has a special use license.

Current law does not allow conservation easements on school trust lands in any other circumstances, even if adjacent uses suggest a conservation easement is the best avenue for maintaining existing wildlife, agricultural, recreational or other public uses of the area, and even though the state can earn income from the easement.

An Example of Another Potential Type of School Trust Land Easement

The Whitefish/State Trust Lands Neighborhood Plan, a land-use plan for the 13,000-plus acres of State School Trust Land surrounding the community of Whitefish, envisions the purchase of conservation easements on trust lands to preserve public access where it has historically existed or is planned. In most cases, traditional forestry and recreational management on the easement lands would continue; conservation easements could

Resources

Conservation Groups

Montana Audubon
P. O. Box 595
Helena, MT 59624
(406) 443-3949
www.mtaudubon.org

Nature Conservancy
32 S Ewing St, Ste #215
Helena, MT 59601
(406) 443-0303
www.nature.org/wherework/northamerica/states/montana/

Government Agencies

MT Dept. of Fish, Wildlife and Parks
P. O. Box 200701
Helena, MT 59620-0701
(406) 444-2535
www.fwp.state.mt.us

Montana Department of Natural Resources and Conservation
P.O. Box 201601
Helena, MT 59620-1601
(406) 444-2074
www.dnrc.state.mt.us

Statutory References

Specific Montana Statutory References (Montana Code Annotated 2005, can be found at http://data.opi.state.mt.us/bills/mca_toc/index.htm):
Conservation easements: Title 76, Chapter 6, Parts 1 and 2
State lands: Title 77, Chapter 2, Part 1

also be structured to reserve a few carefully selected homesites. The goal of this neighborhood plan has been to work with the Montana Department of Natural Resources and Conservation (DNRC) to provide increased revenue for the beneficiaries of the school trusts while maintaining the economic, environmental, and cultural vitality of Whitefish and the surrounding areas. Conservation easements could help meet this goal, but are not allowed under current law.

The Value of a Conservation Easement on School Trust Lands

By law, DNRC, which has the responsibility of managing the state's 5.2 million acres of school trust lands to generate revenue for the state's schools for the long term, and the Land Board are required to get full market value for the sale of any interest in school trust lands. The value of a conservation easement is determined by an independent appraisal and is the difference between the full market value of the land and the value of the same land with the conservation restrictions in place. Typically, easement values vary between 30 percent and 70 percent of full market value, although values could be higher in some instances. DNRC and the Land Board, which is composed of Montana's five statewide elected administrative officials (governor, attorney general, auditor, superintendent of public instruction and secretary of state), would determine whether sufficient value is being generated from the proposed transaction to accept the easement.

Perpetual Conservation Easements

Some previous Montana Legislatures, particularly in 2003, have seen attacks on perpetual conservation easements - easements that continue as they are passed down through generations. These bills came from conservative legislators who are narrowly focused on individual private property rights. The anti-easement legislation died in committee, but the nature of the attacks suggested future challenges.

Currently, easements for conservation purposes can only be granted on school trust lands under limited circumstances. The 2005 legislature considered a bill to remove these restrictions and allow conservation easements on all school trust lands (SB 337, Dan Weinberg, D-Whitefish). The bill passed the Senate, but failed in the House. In 2007 Senator Weinberg tried again, by sponsoring Senate Bill 391 to allow state agencies to apply conservation easements to school trust lands. This bill would have provided agencies another tool to manage land for public use, while recognizing and protecting the lands' conservation values, such as clean drinking water and wildlife habitat. Montana Audubon and the Montana Smart Growth Coalition supported SB 391, which passed the Senate - but yet again, failed to pass the House during a particularly partisan legislative session. The idea was the subject of a legislative interim study committee and may be revived in 2009.

Recommendations for the Future

The Montana Legislature must ensure that the ability of landowners to voluntarily place their lands in perpetual conservation easements is maintained. The next Legislature

should remove the current restrictions on placing conservation easements on state school trust lands. The DNRC should be allowed to accept conservation easements on school trust lands for fair market value, thus preserving traditional uses - or allowing new uses that are determined to be in the best interests of Montana residents and the school trust. Hopefully the 2009 Legislature will finally pass the proactive and common sense bill to properly address this issue.



"PRIVATE LAND CONSERVATION"

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About Conservation Easements

A conservation easement, simply put, protects private lands from inappropriate development.

Conservation easements are negotiated agreements between a landowner and a land trust that establishes the landowner's commitment for retaining his or her property as open lands. In essence, a conservation agreement is a voluntary legal agreement that limits the landowner's ability to develop the land, and calls for conservation of the property's natural values.

A conservation easement is negotiated between the landowner and a land trust based in part on the landowner's desires, so easements vary in intent and purpose. But easements typically restrict these land developments: Subdivision for residential or commercial activities, dumping of toxic waste, and surface mining.

It is important to note that under the terms of a conservation easement the landowner continues to own, and manage, the property. The property still produces crops, hay, livestock, timber and other commodities. The landowner still makes all the farm/ranch decisions, still pays property taxes, and because the goal of the easement is to conserve open lands, the goal of the easement is to preserve the elements of a working farm or ranch.

What the property cannot produce, under the terms of the easement, are subdivisions or industrial activities.

By state law, conservation easements must accomplish at least one of these three conservation purposes: Preservation of open space (including farmland, ranchland and forestland), preservation of a relatively natural habitat for fish, wildlife or plants, or preservation of lands for education or outdoor recreation of the general public.

The conservation agreement protects the lands in perpetuity, and the easement is recorded at the county courthouse with the county clerk and recorder. The easement is also monitored (on an annual basis) by the land trust holding the easement, and if violation occurs, the land trust enforces the terms of the easement.

Landowners who place easements on their property do so for a variety of reasons. The value of the easement can qualify as a charitable contribution and potentially be eligible for federal income tax and estate tax benefits. Remember, the easement restricts commercial, industrial and residential subdivision development of the property, so in a practical sense the land value is diminished with the easement. Since that land value is voluntarily diminished - and voluntarily diminished for conservation purposes - the landowner can potentially receive tax benefits.

In August of 2006 the President signed federal legislation expanding the federal tax incentives of conservation easement donations. These new incentives allow qualifying farmers and ranchers to shelter 100 percent of their income from federal income taxes for potentially up to 16 years.

Land trusts always encourage landowners to consult their attorney or tax advisor to fully explore the estate and income tax benefits associated with the charitable donation of a conservation easement.

In some cases, the conservation easement is sold rather than donated to the land trust. The end result is the same: Open lands, continuation of working farms and ranches, protection of wildlife habitat and preservation of what makes Montana such a unique and special place. In rare cases, the fee title of the private land is sold or donated to a land trust, and in some cases - most notably Plum Creek Timberlands property in the Blackfoot and Swan valleys - the land purchased by the land trust is later sold either to federal agencies or private conservation buyers to enhance land conservation in those areas.

In other cases, the landowner donates or in other ways conveys an easement to a land trust for more altruistic reasons. In many cases, the landowner has such a bond with - and passion for - the land that the landowner has one simple wish: To protect the land, to keep the property whole and intact, long after the landowner and the rest of us have departed.

The only way to protect private lands in perpetuity is through a conservation easement.

Some have questioned the need for conservation easements to be in perpetuity, but there are several reasons why the easements follow the land forever. One, current landowners who donate or otherwise convey a conservation easement want assurances their property will be protected not just through their lifetime, but forever. Two, federal law requires the conservation easement be held in perpetuity to qualify for federal income tax and estate tax benefits. Three, there is a concern that if conservation easements granted tax deductions and were allowed for terms - say, 20 years or 100 years - landowners could be tempted to receive the federal tax deductions for decades while speculating on lands that are rising in value, then subdivide that same property later after the term of the conservation easement expires.

Also, there are many land use decisions - on both private and public lands - that are made on a regular basis that in essence are made in perpetuity. When a county planning board and county commission vote to allow a 50-lot subdivision, and the land fills with 50 homes, there is no doubt that land will be in residential/commercial/industrial use in perpetuity.

The question of public access to conservation easement lands occasionally comes up, and the issue is addressed in the traditional Montana manner: The landowner controls access.

In many cases, land trusts work hard to enhance and expand recreational access to both private and public lands. Some members of the Montana Association of Land Trusts have active trail programs that significantly expand hiking and other recreation opportunities in their areas. Prickly Pear Land Trust in Helena has taken the lead on an ambitious rails-to-trails program in the Missouri River area and the Gallatin Valley Land Trust helps maintain and expand a large array of trails in the Bozeman area.

At a ceremony along the Madison River in July 2006, the Trust for Public Land and about 400 friends gathered to honor a conservation easement that provided hunting access to Madison Valley bottomlands and hills, greatly expanded access along the fabled Madison River, and allowed the Forest Service to establish a trailhead on private land for access to national forest lands and the Lee Metcalf Wilderness Area.

Above all, land trusts seek to protect and conserve open lands, protect and conserve wildlife habitat, protect and conserve working farms and ranches, and protect and preserve stream corridors.

The number of easements and easement acreage increase on a fairly regular basis, but association members within the Montana Association of Land Trusts hold roughly 900 easements and protect slightly less than a million acres of Montana private lands.

For more information about Montana land trusts, [click here](#).
